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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

SHERRI LYNN BARTON,	)	Case No. EDCV 12-1013-MLG
	)	
Plaintiff,	)	MEMORANDUM OPINION AND ORDER
	)	
v.	)	
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of the	)	
Social Security	)	
Administration,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Sherri Barton seeks judicial review of the Commissioner's final decision denying her applications for disability insurance ("DIB") and Supplemental Security Income ("SSI") benefits. For the reasons stated below, the decision of the Commissioner is REVERSED and the matter REMANDED for further proceedings consistent with this opinion.

**I. Background**

Plaintiff was born on December 1, 1962, and was 44 years old at the time she filed her applications for benefits. (Administrative Record ("AR") at 224-35.) She has a high school education and has relevant work experience as a house cleaner and title clerk. (AR at 253, 256.) Plaintiff filed her benefits applications on May 22, 2006, alleging

1 disability beginning December 1, 2005, due to fibromyalgia and  
2 depression. (AR at 21, 123.)

3 Plaintiff's applications were denied initially on November 2, 2006  
4 and upon reconsideration on March 2, 2007 (AR at 139-43, 149-53.) An  
5 administrative hearing was held on August 13, 2008, before  
6 Administrative Law Judge ("ALJ") Thomas J. Gaye. On September 26, 2008,  
7 the ALJ issued an unfavorable decision. (AR at 124-33.) The Appeals  
8 Council remanded the case for rehearing on May 5, 2010. (AR at 134-38.)

9 On March 8, 2011, ALJ Sharilyn Hopson held a second administrative  
10 hearing, at which Plaintiff testified, as did two medical experts and a  
11 vocational expert ("VE"). (AR at 33-87.) On April 7, 2011, ALJ Hopson  
12 issued an unfavorable decision. (AR at 16-27.) She found that the  
13 medical evidence established that Plaintiff suffered from the following  
14 severe impairments: "fibromyalgia that includes overactive bowel and  
15 irritable bowel syndromes, major depressive disorder, panic disorder  
16 without agoraphobia and she is overweight to obese." (AR at 27.) The ALJ  
17 determined that Plaintiff's impairments did not meet, or were not  
18 medically equal to, one of the listed impairments in 20 C.F.R., Part  
19 404, Subpart P, Appendix 1. (Id.) The ALJ further found that Plaintiff  
20 retained the residual functional capacity ("RFC") to perform a range of  
21 light work as defined in 20 C.F.R. 404.1567(b) and 416.967(b) with the  
22 following exceptions:

23 The claimant is able to stand/walk 6 hours in an 8 hour  
24 workday with normal breaks such as every 2 hours and sit 6  
25 hours in an 8 hour workday with normal breaks such as every 2  
26 hours. She can lift/carry 10 pounds frequently, 20 pounds  
27 occasionally and occasionally stoop and bend. She can climb  
28 stairs but she cannot climb ladders, work at heights or

1 balance. She should have ready access to restroom facilities.  
2 She is limited to simple repetitive tasks with no public  
3 interaction and only non intense contact with coworkers and  
4 supervisors. No hypervigilance, fast paced work and she cannot  
5 be responsible for the safety of others.

6 (AR at 22-23.) The ALJ concluded that Plaintiff was capable of  
7 performing her past relevant work as a house cleaner and was therefore  
8 not disabled within the meaning of the Social Security Act. See 20  
9 C.F.R. § 416.920(f). (AR at 27.)

10 On May 16, 2012, the Appeals Council denied review. (AR at 1-4.)  
11 Plaintiff then timely commenced this action for judicial review. On  
12 October 29, 2012, the parties filed a Joint Stipulation ("Joint Stip.")  
13 of disputed facts and issues. Plaintiff contends that the ALJ erred by:  
14 (1) failing to properly consider, at Step Four of the sequential  
15 evaluation, whether Plaintiff was capable of performing her past work as  
16 a house cleaner as generally performed; (2) failing to properly consider  
17 the opinion of Plaintiff's treating physician; and (3) relying upon the  
18 opinion of the testifying medical expert. (Joint Stip. at 3.) Plaintiff  
19 seeks reversal of the Commissioner's denial of her applications and  
20 payment of benefits or, in the alternative, remand for a new  
21 administrative hearing. (Joint Stip. at 29.) The Commissioner requests  
22 that the ALJ's decision be affirmed. (Joint Stip. at 30.)

23 After reviewing the parties' respective contentions and the record  
24 as a whole, the Court concludes that the ALJ erred in finding, at Step  
25 Four of the sequential evaluation, that Plaintiff could perform the job  
26 of housekeeper. Accordingly, the matter shall be remanded for further  
27 proceedings consistent with this opinion.<sup>1</sup>

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<sup>1</sup> The Court does not reach the remaining claims of error and will not decide whether these issues would independently warrant relief. The ALJ may wish to consider these other claims of error upon remand.

## II. Standard of Review

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The Commissioner's or ALJ's decision must be upheld unless "the ALJ's findings are based on legal error or are not supported by substantial evidence in the record as a whole." *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1990); *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means such evidence as a reasonable person might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Widmark v. Barnhart*, 454 F.3d 1063, 1066 (9th Cir. 2006). It is more than a scintilla, but less than a preponderance. *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006). To determine whether substantial evidence supports a finding, the reviewing court "must review the administrative record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1996). "If the evidence can support either affirming or reversing the ALJ's conclusion," the reviewing court "may not substitute its judgment for that of the ALJ." *Robbins*, 466 F.3d at 882.

## III. Discussion

Plaintiff contends that the ALJ erred at Step Four of the sequential evaluation because she determined that Plaintiff could perform her past relevant work as generally performed. (Joint Stip. at 3.) As part of her RFC determination, the ALJ concluded that Plaintiff was limited to "no public interaction and only non intense contact with coworkers and supervisors." (AR at 22-23.) When asked to identify any

1 possible jobs that Plaintiff could perform in view of her RFC, the VE  
2 testified that Plaintiff could perform her past job of "cleaner,  
3 housekeeping" (Dictionary of Occupational Titles ("DOT") 323.687-014),  
4 as generally performed. (AR at 27, 83.) Plaintiff argues that the ALJ's  
5 determination was erroneous because the functional limitation against  
6 having any contact with the public contradicts the DOT's description of  
7 the job of "cleaner, housekeeping" as including "render[ing] personal  
8 assistance to patrons." (Id.) (Joint Stip. at 3.)

9 Although evidence provided by a VE is generally expected to be  
10 consistent with the DOT, "[n]either the DOT nor the VE . . . evidence  
11 automatically 'trumps' when there is a conflict." Social Security Ruling  
12 ("SSR") 00-4p; *Massachi v. Astrue*, 486 F.3d 1149, 1153 (9th Cir. 2007).  
13 Rather, the DOT raises a rebuttable presumption as to a job  
14 classification, and "[a]n ALJ may rely on expert testimony which  
15 contradicts the DOT, but only insofar as the record contains persuasive  
16 evidence to support the deviation." *Johnson v. Shalala*, 60 F.3d 1428,  
17 1435 (9th Cir. 1995); *Massachi*, 486 F.3d at 1153 (when a conflict  
18 between a VE's testimony and the DOT arises, the ALJ must make an  
19 inquiry with the VE and then determine whether the VE's "explanation for  
20 the conflict is reasonable and whether a basis exists for relying on the  
21 expert rather than the [DOT]").


22 Here, neither the VE nor the ALJ attempted to explain or justify  
23 the apparent discrepancy between the RFC's limitation to no public  
24 interaction with the DOT's description of the job as requiring providing  
25 personal assistance to patrons. It is unclear from Plaintiff's testimony  
26 whether she was providing housekeeping services solely to individual  
27 home owners, who perhaps could be considered to be Plaintiff's  
28 "supervisors," thus avoiding any contact with the general public.

1 Alternatively, Plaintiff may have been working for a house cleaning  
2 service or for a hotel or other commercial establishment, in which case  
3 she was required to interact with the general public. Because the ALJ  
4 did not clarify the apparent discrepancy, the VE's testimony could not  
5 serve as substantial evidence supporting the ALJ's Step Four  
6 determination. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1042 (9th Cir.  
7 2008) (ALJ erred in finding that the claimant could return to past  
8 relevant work based on the VE's testimony that deviated from the DOT  
9 because the ALJ "did not identify what aspect of the VE's experience  
10 warranted deviation from the DOT, and did not point to any evidence in  
11 the record other than the VE's testimony ..."); *Pardue v. Astrue*, 2011  
12 WL 5520301 at \*5 (C.D. Cal. Nov. 14, 2011)(finding inconsistency  
13 between DOT description of job of cleaner and ALJ's finding that  
14 claimant should not have contact with public).

15  
16 **IV. Conclusion**

17 For the reasons stated above, the decision of the Social Security  
18 Commissioner is REVERSED and REMANDED for further proceedings consistent  
19 with this opinion.

20  
21 DATED: November 8, 2012

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25 Marc L. Goldman  
26 United States Magistrate Judge  
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